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In the Supreme Court of the United States

OCTOBER TERM, 1949

Nos. 329, 330

MORRIS KLEIN AND HARRY BURKE, PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals (R. 638-649) is reported at 176 F. 2d 184. The opinion of the District Court (R. 13-23) overruling motions to dismiss the indictment and for a bill of particulars is not reported.

JURISDICTION

The judgments of the Court of Appeals were entered July 21, 1949 (R. 649-650), and a petition for rehearing (R. 651-660) was denied August 15, 1949 (R. 661). The petition for writs of certiorari

was filed September 12, 1949. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1). See also Rules 37(b)(2) and 45(a), F. R. Crim. P.

QUESTIONS PRESENTED

1. Whether, under Missouri law, a primary is such an integral part of the procedure of electing Representatives in Congress that the right of participation in such an election is protected by Article I, Section 2 of the Constitution.

2. Whether the evidence is sufficient to sustain petitioners' convictions.

3. Whether the trial court erred in admitting in evidence public records showing the names and voting records of registered voters and lists of voters copied from a poll book which had been stolen before trial.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

The pertinent provisions of the Constitution, federal statutes, and Missouri statutes involved are set out in the Appendix, pp. 18-25, *infra*.

STATEMENT

Petitioners Klein and Burke, Democratic precinct captain and ward worker, respectively, in the 10th Precinct of the First Ward of Kansas City, Missouri, were indicted with three others [1] under Section 19 of the Criminal Code, 18 U.S.C. (1940

[1] The trial judge granted motions for judgment of acquittal as to the defendants Wilson and Melham (R. 33) and a motion for a new trial and in arrest of judgment as to the defendant Holmes (R. 51).

ed.) 51 (Appendix, *infra,* p. 18), for conspiracy to injure and oppress qualified voters of the 10th Precinct in the free exercise and enjoyment of their rights secured by the Constitution and laws of the United States to vote for candidates for the Democratic nominations for the offices of United States Senator and Representative in Congress at a primary election held on August 6, 1946, and to have their votes counted as cast, by preventing qualified voters from voting, permitting persons not qualified as voters to vote in the name and place of qualified voters, placing forged and fictitious ballots in the ballot box, and other means, thereby to effect a fraudulent count of the votes cast and impair, diminish, and dilute the effect of the choice of the voters (R. 1-6).

As we read the petition, petitioners do not dispute that the evidence showed the existence of a conspiracy as charged in the indictment, but only that there was sufficient evidence to show that they participated in it (see Pet. 24-27). We summarize here very briefly the undisputed facts tending to establish the conspiracy and discuss in the Argument, *infra,* pp. 11-13, the evidence of petitioners' activities.

At the primary held on August 6, 1946, there were three candidates—Axtel, Slaughter, and Walsh—for the Democratic nomination for Representative in Congress. The returns from the 10th Precinct showed 259 votes cast for Axtel, 19 for Slaughter, and 8 for Walsh (R. 154, 610).

Thirty-six persons who had qualified to vote testified that they did not vote in the election, but ballots were cast in their names by impersonators. Twenty-three qualified voters testified that they voted for Slaughter and four that they voted for Walsh. Six qualified voters were informed when they appeared at the polls that they had already voted when as a matter of fact they had not. After protesting to the Board of Election Commissioners, they were allowed to vote, and as to each of them both votes were counted. (R. 610-611.) The Government's evidence established that 43 voters were impersonated and 43 fraudulent ballots counted. It was also proved that practically all of the fraudulent votes were cast for Axtel. (See R. 648.)

Upon conviction (R. 36-37), petitioner Klein was sentenced to eighteen months' imprisonment and fined $25 (R. 52-53) and petitioner Burke was sentenced to imprisonment for one year and one day and fined $25 (R. 53-54). The convictions were affirmed by the Court of Appeals (R. 649-650).

ARGUMENT

1. Petitioners' principal contention (Pet. 11-19) is that the Missouri primary here involved was not an "integral part" of the general election procedure within the rule of *United States* v. *Classic*, 313 U.S. 299.

The *Classic* case held that the law of Louisiana made the primary election an integral part of the procedure of choosing Representatives in Con-

gress and that where such is the case, the rights of voters to cast their ballots in primaries and have them counted are secured by Article I, § 2 of the Constitution (Appendix, *infra*, p. 18), and that a conspiracy to injure and oppress citizens in the free exercise and enjoyment of such rights is punishable under §§ 19 and 20 of the Criminal Code. That decision, we submit, is controlling here.

Petitioners' attempt (Pet. 12-13) to distinguish the *Classic* case on the ground that the Louisiana primary was held to be an integral part of the general election machinery because of the fact that in that State the winning candidates in the primary invariably won in the general election, is negated by this Court's statement of the rule of that case (313 U.S. at 318):

> Where the state law has made the primary an integral part of the procedure of choice, or where in fact the primary effectively controls the choice, the right of the elector to have his ballot counted at the primary is likewise included in the right protected by Article I, § 2. And the right of participation is protected just as is the right to vote at the election, where the primary is by law made an integral part of the election machinery, whether the voter exercises his right in a party primary which *invariably, sometimes or never* determines the ultimate choice of the representative. [Italics supplied.] [2]

[2] *United States* v. *Gradwell*, 243 U. S. 476, upon which petitioners strongly rely (Pet. 12, 13-14), does not help them.

It is clear from the Missouri statutes (see Appendix, pp. 19-25, *infra*), just as it was clear from the Louisiana statutes in the *Classic* case, that the primary is an integral part of the procedure for choosing Representatives in Congress.[3] Section 11546 of the Revised Statutes of Missouri, 1939, provides that "Hereafter all candidates for elective offices shall be nominated by a primary election held in accordance with this article." The statutes contain provisions for the time and place of primary elections (Sec. 11547), an official ballot for primaries (Sec. 11557), distribution of primary ballots (Sec. 11558), payment for such ballots and other supplies and expenses from the public treasury (Sec. 11559), qualifications of voters at primaries (Sec. 11563), publication of the results of primaries by the Secretary of State (Sec. 11570), certification of the nominees by the Secretary of State to county clerks (Sec. 11571), the

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So far as pertinent here, that case held only that the rights which candidates for nomination for Senator may have had in a West Virginia primary election were derived wholly from state law and that a conspiracy to injure and oppress them in the enjoyment of those rights by corrupting the election was not within the scope of Section 19 of the Criminal Code. The Court pointed out in the *Classic* case (313 U. S. at 317) that the *Gradwell* decision expressly reserved the question whether "a primary should be treated as an election within the meaning of the Constitution" (243 U.S. at 487; see also p. 488) and that the question had not been prejudged in *Newberry* v. *United States*, 256 U.S. 232. As we have pointed out in the text, the *Classic* case resolved that question, in so far as the rights of voters under Article I, § 2 are concerned. See also *Smith* v. *Allwright*, 321 U.S. 649, 659-660.

[3] The trial judge, after reviewing the Missouri statutes, held that this proposition was "not debatable" (R. 18-19) and the Court of Appeals agreed (R. 642-643).

appointment of election judges and clerks as in general elections (Sec. 11582), and the application to primaries of all provisions and penalties applicable to general elections, "the intent of this article being to place primary elections under the regulation and protection of the laws now in force as to general elections" (Sec. 11584). Compare the Louisiana statutes summarized in the *Classic* case, 313 U.S. at 311-312. Section 11569 provides:

> The person receiving the greatest number of votes at a primary as the candidate of a party for an office shall be the candidate of that party for such office, and his name as such candidate shall be placed on the official ballot at the following election.

And Section 11595, dealing with ballots, voting, and returns at general elections, provides:

> Every ballot printed under the provisions of this article shall contain the names of every candidate whose nomination for any office specified on the ballot has been certified or filed according to the provisions of this chapter, and no other names. * * *

The results of the primary thus determine the names of the persons who shall appear on the ballot at the general election as the candidates of the parties which participated in the primary. A certificate of nomination of a candidate selected otherwise than by a primary may be filed with the Secretary of State but must be signed by electors

resident within the district equal in number to two percent of the entire vote cast at the last preceding election. Secs. 11527, 11534, 11541. However, an unsuccessful candidate in a primary could not run as the nominee of his party (Secs. 11569 and 11595, *supra*), but would have to run as an independent. Thus, just as in Louisiana, Missouri by statute "eliminates or seriously restricts the candidacy at the general election of all those who are defeated at the primary." 313 U.S. at 311.

The similarity between the Missouri statutes and those of Louisiana is at once apparent. The fact that in Louisiana an unsuccessful candidate at a primary may not be a candidate at the general election (see 313 U.S. at 313), while in Missouri he may do so by certificate of nomination (see Pet. 12-13, 19), does not destroy the essentially analogous features of the Louisiana and Missouri statutes, nor does it negate the proposition that under Missouri law the primary is an "integral part"[4] of the election machinery.

There is no merit in petitioners' further contention (Pet. 12-15, 19) that the *Gradwell* decision (footnote 2, p. 5, *supra*) demonstrates that under Missouri law the primary is not a part of the election process because of the provisions, common to both West Virginia and Missouri, whereby

[4] Webster's New International Dictionary defines "integral," *inter alia*, as "composed of constituent parts making a whole." Under this definition, the Missouri primary system is certainly an "integral part" of the election machinery within the meaning of that phrase as used in the *Classic* decision. Cf. Pet. 15, 17.

an unsuccessful candidate at a primary may still become a candidate at the general election. In the first place, as we have pointed out above, the *Gradwell* case was concerned with the rights of candidates at primaries and the question whether a primary is an election within the meaning of Article I, § 2 of the Constitution was expressly reserved. Under the *Classic* case, decided 24 years later, the status of a primary as an election within the protection of the Constitution depends, *inter alia,* upon the pattern of state law regulating primaries and the effect of the choice of candidates for nomination upon the ultimate choice at the general election. As we have shown, under Missouri law primary and general elections are fused into a single procedure for the election of public officers. Finally, it should be noted that in *Smith* v. *Allwright,* 321 U.S. 649, it was held, upon the authority of the *Classic* decision, that a Texas primary was an election within the protection of the Constitution, notwithstanding provisions of Texas law whereby it was possible for an unsuccessful candidate for nomination at a primary election to be elected at the general election (see 321 U.S. at 656 footnote, 663).[5]

2. As we understand their argument, petitioners' attack (Pet. 24-28) upon the sufficiency of the evidence to support their convictions goes only

[5] Petitioners' contention (Pet. 19-20) that Section 19 of the Criminal Code as applied here is unconstitutional for indefiniteness is in the teeth of the holding to the contrary in the *Classic* case, 313 U.S. at 322-325, and they cite only the dissenting opinion in that case as supporting them.

to the evidence connecting them with the conspiracy, but not to the evidence showing that a conspiracy existed. In any event, it is clear from the evidence briefly summarized in the Statement, *supra,* pp. 2-4, that there existed a conspiracy to corrupt the election and that, as the Court of Appeals observed (R. 648), it "required the intervention of a human agency to bring about its unlawful purpose." In such circumstances, it is settled that only slight quantitative evidence connecting a defendant with a proved conspiracy may in the circumstances be substantial and, therefore, sufficient to warrant submission to the jury of the issue of his guilt. *Meyers* v. *United States,* 94 F. 2d 433, 434 (C.A. 6), certiorari denied, 304 U. S. 583; *Luteran* v. *United States,* 93 F. 2d 395, 398 (C.A. 8), certiorari denied, 303 U. S. 644; *Marx* v. *United States,* 86 F. 2d 245, 250 (C.A. 8); *Galatas* v. *United States,* 80 F. 2d 15, 24 (C.A. 8), certiorari denied, 297 U. S. 711. Nor is it necessary that there be participation by each conspirator in every detail of its execution. *Ryan* v. *United States,* 99 F. 2d 864, 869 (C.A. 8), certiorari denied, 306 U. S. 635. The jury having found petitioners guilty, that view of the evidence and the inferences reasonably deducible therefrom which are most favorable to the Government must be accepted. E.g., *Glasser* v. *United States,* 315 U. S. 60, 80; *Walker* v. *United States,* 93 F. 2d 383, 392 (C.A. 8), certiorari denied, 303 U. S. 644; *Shannabarger* v. *United States,* 99 F. 2d 957, 961 (C.A. 8).

Although as to both petitioners the evidence was much more than slight, it was especially strong against Klein. As precinct captain he had the duty of getting out the vote on election day (R. 326). In his position he could learn what voters were not expected to vote so that they could safely be impersonated. One Passantino testified that either he or petitioner Burke got a list of the registered voters in the precinct and prepared a "You Have Not Voted" card (Gov. Ex. 13, Ex. Book III, p. 71) for each and delivered them to Klein (R. 317-318, 321). After a voter cast his ballot the card bearing his name was destroyed (R. 322). If, however, a registered person said he probably would not vote, his card was brought back to Klein, who could then get an impersonator for such qualified voter. The operation of the plan is illustrated by the testimony of the witnesses Rentie and Tatum. On the morning of election day Klein distributed some of these cards to them and agreed to pay them $10 each to contact the persons named thereon and urge them to vote and to return the cards bearing the names of those who were not going to vote (R. 324-326; see also R. 296-298, 299-301, 302-304). Rentie returned the card of one Pinkston (R. 327), who did not vote and was impersonated (R. 268-269). Tatum, who corroborated Rentie's testimony, turned in the cards of other persons who were not expected to vote, some of whose names she remembered (R. 340). Four of these latter persons testified they

did not vote (R. 253, 263, 288, 350), although they were shown to have been "voted" by the documentary evidence (Gov. Exs. 1 and 2 and Gov. Ex. 6, Ex. Book III, pp. 36, 38, 43, 29).

There was evidence that Klein had a registration list at the polls all day, checking off and calling out names of the persons presenting themselves as voters (R. 328, 339). On one occasion, Klein took a ballot away from a voter, Mrs. Bowles, just as she was about to drop it in the ballot box (R. 178, 182). Another voter, Bowles, was told when he appeared to cast his ballot that he had already voted when in fact he had not. When he returned later with election officials to demand a ballot, Klein told him and his brother that they "were Democrats anyway, and that it didn't make much difference" and that they should "forget about it" (R. 184-185).

Estella Carter testified that when she came to the polls to vote, Klein said he had already "voted" her because Mrs. Rentie had told him that she would not vote; that she complained to Klein that she had been deprived of her right to vote; that he told her to wait a minute, but in the meantime the polls closed and she did not get a chance to vote; and that Klein then offered to give her some money and make it "all right" with her but she refused to accept it (R. 349-350).

There was also clear evidence that Burke participated in the conspiracy. He was working in "cooperation" with Klein, the precinct captain (R.

362), and his duties were to give any assistance he could (R. 383). He took voters to the polls, and learned whether or not registered voters were going to vote (R. 364).[6] He had been a worker in the 10th Precinct for 20 years (R. 363). He paid 15 or 20 voters a total of about $25, allegedly out of his own pocket, just to show his friendship for their having voted (R. 362, 366, 386, 387). Burke was also quoted as having stated that when he took a voter named Rast to the polls late in the afternoon, they were told that Rast had already been voted, and that he became a little perturbed with Klein because of the incident (R. 378-379). Burke also admitted that about 6:30 p.m. on election day he and one Keegan called upon Luther and Marguerita Johnson, who told them they were not going to the polls (R. 383-385). The Johnsons themselves did not vote, but their names were "voted" (R. 266).

Both courts below having found the evidence sufficient to support petitioners' convictions, we submit that there is no occasion for further review of the evidence by this Court. See *Kann* v. *United States*, 323 U. S. 88, 93; *United States* v. *Johnson*, 319 U. S. 503, 518; *Delaney* v. *United States*, 263 U. S. 586, 589-590.[7]

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[6] Petitioners' argument (Pet. 24) that it is incredible that they would cooperate with each other because Burke resented the loss of his job as precinct captain to Klein, is contradicted by the above statements of Burke to two F.B.I. agents.

[7] There is no merit in petitioners' contention (Pet. 27-28), citing *State* v. *O'Brien*, 168 Mo. 404, and *State* v. *Nolan*, 168 Mo. 446, that there was error, because in attempting to prove

3. Finally, petitioners contend that the trial court deprived them of the right to confront and cross examine witnesses, in violation of the Sixth Amendment, when it admitted in evidence Government Exhibits 1, 2, 6 and 7 (Pet. 20-24). There is no substance in this argument.

Exhibits 1 and 2 were the original and duplicate loose-leaf binders of registration affidavits of voters in the 10th Precinct. The backs of the affidavits contained the voting records of the individual voters. Paragraph 26 of "Instructions to Judges and Clerks," issued by the Board of Election Commissioners for the August 6, 1946, primary (Ex. Book III, p. 67) reads:

> After the voter has polled his or her vote, the two judges having charge of the original and duplicate register, shall stamp in the first vacant space the date and the word "Voted."
> * * *
> It is the responsibility of the judges to see that the clerks promptly enter the voter's name and place of residence on the poll books.

---

that qualified voters were prevented from voting, the Government relied upon the fact that such persons were registered as sufficient to prove that they were qualified. The Missouri cases were concerned with convictions under a Missouri statute making it a felony to impersonate an elector, and the local decisions that in such a case proof of registration was not sufficient to prove the qualifications of the voter certainly do not control in a federal prosecution for conspiracy under Section 19 of the Criminal Code. There was proof that registered voters were impersonated at the polls. And, contrary to petitioners' further contention (Pet. 25), it was not necessary that the impersonators be produced as witnesses to establish that fact.

The Board is required by Missouri statute (R. S. Mo., 1939, Sec. 12151) to compare the voting records on the registration affidavits with the entries in the poll books made contemporaneously with the voting for the purpose of correcting any errors in the voting records. The stamping of the registration affidavits at the precinct by the election officials to indicate the voting record is also prescribed by statute (Sec. 12139), as well as by the regulation quoted above, and the same is true of the keeping of a poll book (Sec. 12137).

Exhibits 1 and 2 were public records, and the voting records entered therein were made contemporaneously with the event and in the regular course of business as prescribed by Missouri law. They were admissible under 28 U.S.C. (1940 ed.) 695 (Appendix, *infra,* pp. 18-19), which provides that "any writing or record * * * made as a memorandum or record of any act, transaction, occurrence, or event, shall be admissible as evidence of said act, transaction, occurrence, or event, if it shall appear that it was made in the regular course of any business * * *." Public records, regularly kept, are admissible under this statute,[8] the constitutionality of which has been sustained as against the claim it violated the Sixth Amendment.[9] The purpose of the statute was "to make admissible any writing if made in the regular course of any

[8] *Hunter* v. *Derby Foods,* 110 F. 2d 970, 972 (C.A. 2); *Pollack* v. *Metropolitan Life Ins. Co.,* 138 F. 2d 123, 127-128 (C.A. 3).

[9] *United States* v. *Leathers,* 135 F. 2d 507, 511 (C.A. 2).

business without the strict proof of authenticity which had theretofore been required." [10]

The best evidence as to who voted in the August, 1946, primary was, of course, the testimony of the voters themselves. The Government did produce at least 36 registered voters who testified that they did not vote. In order to prove fraudulent voting, the Government had a right to produce these public records to show that these voters were recorded as having voted, i.e., to show that their names were voted by impersonators.

Before the trial, both the ballots cast at the primary and the poll book containing the names and addresses of the persons recorded as having voted had been stolen (R. 66-67). Exhibit 6 was a list, copied by the witness Wilson early in September 1946, about a month after the election and before the theft, of the "names and addresses of all persons listed in the poll book as having voted" (R. 114). Exhibit 7 was a list of registered voters which had been checked by the witness Graves in November 1946 against the poll book and on which he had placed opposite the names the numbers of the lines in the poll book on which the named voters were recorded as having voted (R. 125-128).

Here again, the purpose of introducing these exhibits was to show which registered voters had been recorded as having voted in the primary and they were cumulative of the voting records shown by Exhibits 1 and 2. Since the poll book, if avail-

[10] *Harper* v. *United States*, 143 F. 2d 795, 806 (C.A. 8).

able, would have been admissible under 28 U.S.C. (1940 ed.) 695, *supra*, we submit that these exhibits were admissible as secondary evidence.[11]

Petitioners were confronted with the witnesses who identified Exhibits 1, 2, 6 and 7 (R. 96, 113, 119, 124, 137) and they were subject to cross examination. Hence there was no violation of the Sixth Amendment. As the Court of Appeals observed, petitioners' objections to the exhibits go to their weight rather than to their admissibility (R. 644, 645).

CONCLUSION

No conflict is involved and the case presents no unsettled question meriting consideration by this Court. The petition for writs of certiorari should be denied.

Respectfully submitted.

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OCTOBER, 1949.

[11] *Hartzell* v. *United States*, 72 F. 2d 569, 577-578 (C.A. 8), certiorari denied, 293 U.S. 621; *McDonald* v. *United States*, 89 F. 2d 128, 136-137 (C.A. 8), certiorari denied, 301 U.S. 697.

APPENDIX

Article I of the Constitution provides:

> Section 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature. * * *
>
> Section 4. The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators.

Section 19 of the Criminal Code, 18 U. S. C. (1940 Ed.) 51, provides:

> If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, * * * they shall be fined not more than $5,000 and imprisoned not more than ten years * * *.

The Act of June 20, 1936, c. 640, § 1, 49 Stat. 1561 28 U. S. C. (1940 Ed.) 695 provides:

> In any court of the United States and in any court established by Act of Congress, any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum

or record of any act, transaction, occurrence, or event, shall be admissible as evidence of said act, transaction, occurrence, or event, if it shall appear that it was made in the regular course of any business, and that it was the regular course of such business to make such memorandum or record at the time of such act, transaction, occurrence, or event or within a reasonable time thereafter. All other circumstances of the making of such writing or record, including lack of personal knowledge by the entrant or maker, may be shown to affect its weight, but they shall not affect its admissibility. The term "business" shall include business, profession, occupation, and calling of every kind.

Revised Statutes of Missouri, 1939, as amended, provide:

Sec. 11459. On the first Tuesday after the first Monday in November, in the year 1880, and every two years thereafter, there shall be an election held in each township in this state, and in each ward of the city of St. Louis, for the election of a member of congress from each congressional district, of senators and representatives in those districts and judges of the county courts in those counties where the term of those elected has expired, and for sheriffs and coroners, and such other officers as may be required by law to be elected at such elections.

Sec. 11527. Certificates of nomination shall be filed with the secretary of state for the nomi-

nation of candidates for offices to be filled by the electors of the entire state, or any district or division of a greater extent than one county. For all other nominations to public offices, certificates of nomination shall be filed with the clerks of the county courts of the respective counties wherein the offices are to be filled by the electors.

Sec. 11534. The certificate of nomination of a candidate selected otherwise than by a primary shall be signed by electors resident within the district or political division for which the candidate is presented, to a number equal to two per cent of the entire vote cast at the last preceding election in the state, the county or other division or district for which the nomination is made: *Provided*, that said signers shall declare in said certificate that they are *bona fide* supporters of the candidate sought to be nominated and have not aided and will not aid in the nomination of any other candidate for the same office.

Sec. 11541. Not less than twenty days before an election to fill any public office, the secretary of state shall certify to the clerk of the county court of each county within which any of the electors may by law vote for candidates for such office, the names and the description of each person nominated for such office, as specified in the certificates of nomination filed with the secretary of state.

Sec. 11546. Hereafter all candidates for elective offices shall be nominated by a pri-

mary election held in accordance with this article. This article shall not apply to special elections to fill vacancies, nor to county superintendents of schools, to city officers not elected at a general state election, to town, village or school district officers.

Sec. 11547. The primary shall be held at the regular polling places in each precinct on the first Tuesday of August, 1910, and biennially thereafter, for the nomination of all candidates to be voted for at the next November election.

Sec. 11557. An official ballot shall be printed and provided for use at each voting precinct in the form provided herein. The names of all the candidates for the respective offices, who shall have filed declaration papers as in this article prescribed, shall be printed thereon.

Sec. 11558. At least forty days before the August primary in any year, when a primary election is held, each county clerk shall prepare sample official ballots, placing thereon alphabetically, under the appropriate title of each office and party designation, the names of all candidates to be voted for in the precincts of his county. Such sample ballot shall be printed upon tinted or colored paper, and shall contain no blank endorsement or certificate. Such clerk shall forthwith submit such ticket of each party to the county chairman thereof, and mail a copy to each candidate to his post office address, as given in his declaration paper, and he shall post a copy of each sample ballot in a conspicuous place in his

office. On or before the tenth day before the holding of any primary election the county clerk shall correct any errors or omissions in the ballots, cause the same to be printed and distributed, as required by law in the case of ballots for the general election, except that the number of ballots to be furnished to each precinct shall be one and a half times the number of votes cast by any party in the last preceding election and having nominees and tickets at such primary election. [Added by Laws 1944, Ex. Sess., p. 24, § 1.]

Sec. 11559. All ballots, blanks and other supplies to be used at any primary, and all expenses necessarily incurred in the preparation for or in conducting such primary, shall be paid out of the treasury of the city, county or state, as the case may be, in the same manner, with like effect, and by the same officers as in the case of elections.

Sec. 11563. No person shall be entitled to vote at any primary unless a qualified elector of the precinct and duly registered therein, if registration thereat be required by law, and known to affiliate with the political party named at the head of the ticket he calls for, and attempts to vote, or obligates himself to support the nominees of said party at the following general election.

Sec. 11569. The person receiving the greatest number of votes at a primary as the candidate of a party for an office shall be the candidate of that party for such office, and his name

as such candidate shall be placed on the official ballot at the following election.

Sec. 11570. As soon as the state canvass of a primary shall be certified to him, the secretary of state shall cause to be published a certified statement of the result of such primary as to candidates for state officers, and representatives in congress, and any other candidate whose district extends beyond the limits of a single county, and shall mail to the chairman of the state central committee of each party so much of such certificate as relates to his party.

Sec. 11571. Not less than sixty-nine days before any November election, the secretary of state shall certify to the county clerk of each county within which any of the electors may vote for the candidates for such offices, the name and description of each person nominated for any such office as specified in the nomination papers. [Added by Laws 1944, Ex. Sess., p. 24, § 1.]

Sec. 11582. The judges and clerks for primary elections held under this article shall be appointed in the same manner, and possess the same qualifications and consist of the same number as judges and clerks of general elections in this state: *Provided,* that in all counties in this state which now contain, or hereafter may contain, a city of not less than one hundred thousand inhabitants and more than four hundred thousand inhabitants, the county committee of each political party which, at the gen-

eral election held next preceding any primary election held under the provisions of this article, cast at least ten per cent of all the votes cast at such election in such county, shall appoint three judges and one clerk for such primary election for each election precinct in such county outside of such city, and in all such cities the judges and clerks of election regularly appointed and commissioned for regular elections shall act as judges and clerks of all primary elections held under the provisions of this article.

Sec. 11584. The provisions of the statutes now in force in relation to the holding of elections, the solicitation of voters at the polls, the challenging of voters, the manner of conducting elections, of counting the ballots and making return thereof, and all other kindred subjects, shall apply to all primaries in so far as they are consistent with this article, the intent of this article being to place primary elections under the regulation and protection of the laws now in force as to general elections. Any act declared an offense by the general laws of this state, concerning caucuses and elections, shall, also, in like case, be an offense in all primaries, and shall be punished in the same form and manner as therein provided, and all the penalties and provisions of the law as to such caucuses and elections, except as herein otherwise provided, shall apply in such cases with equal force and to the same extent as though fully set forth in this article.

Sec. 11595. Every ballot printed under the provisions of this article shall contain the

names of every candidate whose nomination for any office specified on the ballot has been certified or filed according to the provisions of this chapter, and no other names. * * *

Sec. 12137. Each of the clerks of election shall keep a poll book which contains a column marked "number", another headed "residence" and another headed "names of voters". The name and street and number of the residence of such elector voting shall be entered upon the poll book by the clerk, in regular succession, under the proper headings, and the number of each voter, in the order in which he voted, placed opposite the name in the column headed "number".

Sec. 12139. * * * The judge having charge of the precinct register shall then, in a space prepared thereon, write or stamp the word "voted" and the date of the election as in this article provided. * * *

Sec. 12151. It shall be the duty of the board, following each election as soon as convenient, to have the precinct register of each precinct compared with the roster of voters. In case the name of any voter appears on the roster of voters for the election and the fact of his voting does not appear in the space provided for that purpose on the affidavit of registration, the board shall either summon the precinct election judges to come to the office of the said board and correct the voting record of such voters, or may, in their discretion, have the same corrected by the assistants of the board.

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